

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

HENDRICKSON TRUCKING COMPANY

and

LOCAL 164, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (IBT)

Cases 07-CA-086624
07-CA-095591

Respondent, Hendrickson Trucking, Inc., by its attorneys, Jackson Lewis P.C., pursuant to §102.46 of the National Labor Relations Board's Rules and Regulations, takes the following exceptions to the decision of the Administrative Law Judge (ALJ):

EXCEPTIONS

1. The ALJ's demonstrated lack of impartiality which violates administrative procedure.
2. The Board's decision to remand this matter to an ALJ for the limited purposes of issuing a new opinion when the ALJ was not properly appointed at the time she conducted the hearing.
3. The ALJ cannot properly hear or decide this matter because she has formed an opinion about the evidence, the witnesses, and the parties' positions during a period of time in which she was not properly appointed. Thus, she could not perform a legitimate hearing.
4. Remanding this matter to the same ALJ who decided this prior to proper appointment is a violation of statement of procedure §101.10(b) which declares that, "[t]he functions of all Administrative Law Judges....are conducted in an impartial manner" which should be free from any appearance of partiality of bias.

5. The ALJ's finding that in 2002 Hendrickson Trucking was involved in an unfair labor practice case before the Aggregate Carrier Association (ALJ D., p. 3.)

6. The ALJ's finding that throughout negotiations repeated "we need to stop the bleeding" as a mantra. (ALJ D., p 5).

7. The ALJ's finding that the Union believed it had sacrificed wages and many other benefits in past years in attempts to help Respondent save money. (ALJ D., p. 5.)

8. The ALJ's reliance on General Counsel's Exhibit 27 as establishing Respondent's financial performance when General Counsel's Exhibit 27 was specifically offered and admitted "not for the truth of the matter asserted." (ALJ D., p. 6.)

9. The ALJ's finding that General Counsel's Exhibit 27 was "not controverted at the hearing." (ALJ D., p. 6.)

10. The ALJ's decision to credit the testimony of Sprague and Matthews that Sprague began asking how much Respondent expected to save with his proposals early on in the bargaining process. (ALJ D., p. 7).

11. The ALJ's finding that there is no evidence that Respondent addressed or provided counter offers to the Union's proposals. (ALJ D., p. 11.)

12. The ALJ's decision to credit Matthews and Sprague's testimony that they were not provided a spreadsheet. (ALJ D., p. 11.)

13. The ALJ's description of Dubrow's testimony as "wavering and not forthcoming." (ALJ D., p. 11.)

14. The ALJ's crediting of the testimony of Sprague and Matthews that they requested cost savings numbers and documentation on several occasions for the bargaining process. (ALJ D., p. 11.)

15. The ALJ's decision to credit Sprague's testimony that he reminded Respondent that it did not provide information showing cost savings information. (ALJ D., p. 12.)

16. The ALJ's decision to credit Sprague's and Matthews' testimonies that they did not intend to end negotiations with their final offers. (ALJ D., p. 15.)

17. The ALJ's finding that Sprague's and Matthews' testimonies supported by the fact that they voiced objection to Respondent's implementation letters and tried to resume bargaining. (ALJ D., p. 15.)

18. The ALJ's finding that it is undisputed that Respondent was not interested in further discussion on some matters. (ALJ D., p. 16.)

19. The ALJ's finding that at a July 26 meeting, the Union wanted to further negotiate and move on issues previously discussed and on some issues not yet addressed. (ALJ D., p. 16.)

20. The ALJ's finding that there is no evidence Respondent furnished any information in response to information requested. (ALJ D., p. 20.)

21. The ALJ's decision to credit Sprague's testimony over Ryan's testimony regarding a December telephone call even though Sprague never gave any contrary testimony. (ALJ D., p. 21).

22. That the ALJ found it troubling that Ryan tried to contact Sprague on January 2013 to get back to the bargaining table. (ALJ D., p. 21.)

23. The ALJ's statement that on or about January 30, 2013, Respondent was now ready to meet with the Union. (ALJ D., p. 23.)

24. The ALJ's finding that it was not until March 25, 2012, that Ryan contacted Canzano for bargaining dates. (ALJ D., p. 23.)

25. The ALJ's finding that the Union made a request for a financial data during bargaining and that requested information was relevant. (ALJ D., pp. 23-26.)

26. The ALJ's finding that Respondent had an obligation to provide the allegedly requested financial data and information. (ALJ D., p. 25.)

27. The ALJ's finding that the Respondent failed to provide requested financial information. (ALJ D., p. 27.)

28. The ALJ's finding that the Respondents created its own duty to provide allegedly requested financial information. (ALJ D., p. 25.)

29. The ALJ's finding that the Union had a legitimate claim for financial data. (ALJ D., p. 26.)

30. The ALJ's conclusion that the Respondents reliance on *Paperworkers Union*, 98 F2d 861 (6th Cir. 1992) is misplaced. (ALJ D., p. 26.)

31. The ALJ's finding that any provision of financial data that did not include cost savings, calculations or data for economic proposal would be inadequate. (ALJ D., p. 26.)

32. The ALJ's finding that the Respondent had an obligation to provide 2011 income tax returns. (ALJ D., p. 27.)

33. The ALJ's mischaracterization of Respondent's argument that since the Union only asked for the information once, Respondent would not be required to comply. (ALJ D., p. 27.)

34. The ALJ's statement that "Respondent's outright failure to furnish information...". (ALJ D., p. 27.)

35. The ALJ's conclusion that Respondent "simply failed to provide the information." (ALJ D., p. 27.)

36. The ALJ's conclusion that Respondent violated Section 8(a)(5) of the Act by failing to respond to the Union's request for information and bargaining for a new contract. (ALJ D., p. 27.)

37. The ALJ's finding that Respondent failed to provide requested information and a valid impasse was thereby precluded. (ALJ D., pp. 27-28.)

38. The ALJ's conclusion that Respondent violated Sections 8(a)(5) and 8(a)(1) when it implemented its last best and final offer. (ALJ D., p. 28.)

39. The ALJ's finding that Respondent's proposal regarding resolutions of grievances was illogical. (ALJ D., p. 30.)

40. The ALJ's finding that the Respondent's proposal to use the court system for dispute resolution would be more expensive than arbitration. (ALJ D., p. 30.)

41. The ALJ's finding that Respondent's proposal regarding the use of court to resolved contract disputes between the Respondent and the Union was intended to limit employee statutory rights to file charges with the Board. (ALJ D., pp. 30-31.)

42. The ALJ's erroneous statement that any an impasse could only exist if it can be proven that both sides subjectively understood that they had reached impasse. (ALJ D., p. 31.)

43. The ALJ's statement that the Union had made clear that it did not believe that the parties were at an impasse in May and June 2012. (ALJ D., p. 31.)

44. The ALJ's statement that the Union's positions throughout negotiations was that further negotiations might be fruitful. (ALJ D., p. 31.)

45. The ALJ's statement that the parties had not exhausted prospects of reaching an agreement. (ALJ D., p. 31.)

46. The ALJ's reasoning that because the parties had reached tentative agreements early on in negotiations, they could not be at impasse in June of 2012. (ALJ D., p. 32.)

47. The ALJ's implication that in spite of the fact that the Union presented a document called a final proposal with a strike through it, the Respondent should have known that the Union did not really intend its stated final proposal to constitute final proposal. (ALJ D., p. 32.)

48. The ALJ's conclusion that the strike was an unfair labor practice strike. (ALJ D., pp. 33-34.)

49. The ALJ's conclusion that the strikers were entitled to immediate reinstatement when they made their offer to return to work. (ALJ D., pp. 34-35.)

50. The ALJ's finding that the Respondent unreasonably delayed in providing information about AGG Trucking. (ALJ D., p. 35.)

51. The ALJ's finding that the information requested by the Union on July 31, and November 30 were relevant and necessary for its role as collective bargaining agent. (ALJ D., p. 35.)

52. The ALJ's conclusion that the information Respondent provided pursuant to the Union's information request was inadequate. (ALJ D., p. 36.)

53. The ALJ's to credit Sprague's account over Ryan's concerning a phone call in December of 2012, when Sprague did not give an account that was contrary to Ryan's. (ALJ D., p. 37.)

54. The ALJ's statement that Ryan could not recall when or under what circumstances he spoke to Sprague in December 2012. (ALJ D., p. 37.)

55. The ALJ's apparent conclusion that even when the Union refuses meet the Respondent somehow violates the Act by not meeting with the Union. (ALJ D., p. 37.)

56. The ALJ's statement that Ryan's attempt to schedule bargaining with Canzano in March and April of 2013 was inconsistent with Ryan's description of his telephone conversation with Sprague in December of 2012. (ALJ D., p. 37.)

57. The ALJ's conclusions of law 4, 5, 6 and 7. (ALJ D., pp. 37-38.)

58. The ALJ's proposed remedy. (ALJ D., pp. 38-39.)

59. The ALJ's proposed order. (ALJ D., pp. 39-41.)

60. The Complaint in entirety because it was not issued by any lawfully designated Agent of the Board.

61. The conducting of the hearing and the issuance of a decision by a person who had no lawful authority to do either.

62. The prosecution of this case under the "authority" an "acting" general counsel who had no lawful authority to do so.

63. The finding of unfair labor practices which were never the subject of a charge and which were never alleged as such in any complaint.

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Dated: May 9, 2016

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CERTIFICATE OF SERVICE

On this 9th day of May, 2016, the undersigned did cause to be filed the foregoing document with the NLRB using the e-filing system at www.nlrb.gov, and upon Patricia Fedewa, Counsel for the Acting General Counsel, via e-mail at patricia.fedewa@nlrb.gov.

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